

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.525 OF 2006

IN

COMPANY PETITION NO.830 OF 2005

In the matter of Companies Act,
1956;

And

In the matter of Sections 391 to
394 of the Companies Act, 1956;

And

In the matter of Scheme of
Amalgamation between Birla Global
Finance Limited with Aditya Birla
Nuvo Limited (formerly India Rayon
And Industries Limited) and their
respective shareholders and
creditors.

Birla Global Finance Limited

.. Petitioner.

(Orig.Respondent).

And

Ramniranjan Kedia Tourism Services

Pvt. Ltd. & Anr.

.. Applicants.

Mr.Virag Tulzapurkar, Sr. Counsel with Mr.Tapan Deshpande
i/b.Amarchand Mangaldas and S.A.Shroff & Co. for
petitioner.

Mr.V.V.Khemka for applicant.

CORAM : Dr.D.Y.CHANDRACHUD, J.

17TH APRIL, 2007.

P.C.:

1. By an order dated 27th January, 2006, a learned Single Judge of this Court sanctioned a scheme of amalgamation in exercise of powers conferred by Sections 391 to 394 of the Companies Act, 1956. By and as a consequence of the scheme, Birla Global Finance Limited stood amalgamated with the transferee company by the name of Aditya Birla Nuvo Limited. The Hon'ble Mr.Justice S.J.Vazifdar, while sanctioning the scheme noted that the scheme was approved by 96.20% of the equity shareholders and 99.99% of the shareholders present and voting at the meeting of the equity shareholders. The Court recorded the statement of the Official Liquidator that the affairs of the transferor company had not been conducted in a

manner prejudicial to the public interest or the interest of its members and, of the Regional Director on affidavit stating that the scheme is not prejudicial to the interest of the creditors and shareholders.

2. The Court has been informed that the scheme has been duly implemented and acted upon.

3. The Company Application is instituted before the Court by two applicants to whom lease finance had been provided by the erstwhile transferor, in pursuance whereof, hire purchase agreements were entered into. Upon a default by the applicants, possession of the motor vehicles, which form the subject matter of the agreements was taken over and was handed over to a third party. Arbitration proceedings under the provisions of the Arbitration & Conciliation Act, 1996 are pending before a Sole Arbitrator. A complaint under Section 138 of the Negotiable Instruments Act, 1981 has been instituted against the applicants and the criminal prosecution is pending. The applicants have on their part set in motion, criminal proceedings on an allegation of forgery by the transferor and its officials. That criminal prosecution is pending as well. The applicants, it is common ground, appeared before the Gujarat High Court to oppose the

scheme of amalgamation. (The transferee company has its registered office in the State of Gujarat). The Gujarat High Court sanctioned the scheme of amalgamation on 17th June, 2006 in a petition filed by the transferee.

4. The entire basis of the submission before the Court is that the non disclosure of the circumstance that the applicants have instituted a criminal prosecution against the transferor and its officials invalidates the scheme. Moreover, it is urged that the consequence of the scheme of amalgamation would result in the termination of the criminal prosecution against the transferor and hence the scheme should not be sanctioned.

5. At the outset, it must be noted that there is no satisfactory material on record for the Court to come to the conclusion that the scheme of amalgamation was intended to defeat the rights of the applicants. This is not a case where the scheme was propounded with the object of achieving a purpose contrary to law or of stifling a criminal prosecution. If it were to be so, the Court would have sufficient powers to ensure that a result manifestly contrary to law would not ensue. A scheme of amalgamation cannot be used as a ruse to thwart the due process of criminal law. But that is not the case here.

The scheme is a bonafide arrangement conceived in the commercial interests of the parties to it.

6. A grievance is made on behalf of the applicant that though he is an unsecured creditor, he did not receive an individual notice of the hearing of the petition under Section 391 of the Companies Act, 1956. The order of the Court dated 27th June, 2006 records that there was no dispute that the entire procedure required under the law, including the holding of meetings was carried out in accordance with the requirements of law. The applicants if they have a claim, can pursue it in the arbitration proceedings. There is a criminal complaint under Section 138 of the Negotiable Instruments Act, 1981 against the applicants and on their part the applicants allege forgery and have set the criminal process in motion. These are not circumstances which would have the effect of nullifying a scheme otherwise sanctioned in accordance with law. In a given case, the Court may refuse to sanction a scheme which is intended to defeat the process of law. That is why a wholesome power is conferred upon the Court under Sections 391 to 394 to accept or reject a scheme. Having regard to the nature of the interest which the applicants seek to pursue it cannot be held that the sanctioning of the scheme was a nullity

or that the order of the Court has to be recalled.

7. There is no merit in the Company Application,
which is accordingly dismissed.